

references. Independent claims 1, 11, 17, and 18 have all been amended stylistically and to emphasize the differences between the present invention and the reference and/or combination of references cited during prosecution of the parent '383 application.

More specifically, the claims have been amended at numerous locations to eliminate stylistic artifacts. In addition, some or all of the claims have been amended to clarify that the cover piece of present invention may comprise one or more of the following features:

1. container and lid adapted to contain hand made hot beverages;
2. flexural characteristics that maintain a substantially planar configuration when manually gripped at two opposing locations;
3. pressure sensitive adhesive that allows the cover piece to be detachably attached to a lid with manual force; and
4. a tab portion that extends radially outwardly from the lid.

The Applicant respectfully submits that none of these features are disclosed, taught, or suggested by Reynolds. Further, the Applicant respectfully submits that the Reynolds device is intended for manufacture and use in environments so unrelated to the environments in which the claimed device is made and used that one of ordinary skill in the art would not consider the Reynolds device analogous to the claimed cover piece. The differences between the respective manufacturing and operating environments will first be described, after which each of the features listed above will be described separately below.

I. Different Operating Environments

As is apparent from a reading of the Applicant's disclosure and the disclosure of the Reynolds patent, the Reynolds peel tab and the cover piece of the present invention are intended for entirely different manufacturing and operating environments. The cover piece recited in the claims is clearly intended to be applied by hand to a beverage container assembly adapted to contain hand poured hot beverages. The Applicant's cover piece is thus designed for human handling in a fast paced retail environment. In contrast, the Reynolds patent relates to peel tabs that are bonded using heat, a bonding process that would only be practical in an automated factory setting. One of ordinary skill in the art would understand that the Reynolds peel tabs are not intended to be attached by hand and would thus be unsuitable for use with hand poured beverages in a retail environment.

The Applicant thus respectfully submits that one of ordinary skill in the art would not look to the teachings of Reynolds when designing a cover piece for a drinking container assembly as recited in claims 1, 11, 17, and 18. The Applicant thus respectfully any rejections based alone or in part on the Reynolds patent are improper because the Reynolds device belongs to non-analogous art.

II. Hand Poured Hot Beverages

Each of the independent claims has been amended to specify that the cover piece is used with a container assembly designed to accommodate hand poured hot beverages. The Reynolds patent relates to machine filled beverages and specifically addresses the problems with sealed containers for pressurized fluids such as carbonated beverages.

The Applicant thus respectfully submits that one of ordinary skill in the art would thus not read the Reynolds patent as disclosing a cover piece designed for use with hand filled containers for hot beverages.

III. Flexural Characteristics

Referring initially to the term "rigidity" as used in claims 1, 11, 17, and 18, these claims have all been amended to specify that the cover piece is sufficiently rigid to allow the cover piece to maintain a substantially planar configuration when manually gripped at two opposing locations. The claimed cover pieces are applied by hand to cover an opening of a lid of a beverage container in a retail sales environment. The claimed structure allows the cover piece to be applied to a lid by hand with minimal time and effort in a busy retail environment such as a drive through espresso stand.

As noted by the examiner, the Reynolds patent discloses in column 3, lines 66-69, an embodiment of a peel tab employing "relatively stiff or rigid plastic 41 such as polystyrene or the like on the order of 1/16" thickness and having a gas-barrier foil face 43 on the underside thereof". Based on the context in which the Reynolds device is used, the Applicant respectfully submits that the language "relatively stiff or rigid" would not disclose, teach, or suggest the flexural characteristics recited in claims 1, 11, 17, and 18.

In particular, the Reynolds patent discloses "peel tabs" that are bonded over an opening in an aluminum can used as a container for pressurized liquids such as beer or soda. The bond must withstand the pressure of the contents of the container and is thus fairly strong. To overcome this bond, a portion of the peel tab is grasped and pulled almost straight back. The bond can be broken only by deforming the peel tab from a planar configuration such that the bond is successively broken along the length of the peel tab. A "substantially planar" peel tab would require that the entire bond be broken at one time, which would be incompatible with the other requirements of the bond.

The Applicant thus respectfully submits that one of ordinary skill in the art would thus not read the Reynolds patent as disclosing a cover piece having flexural characteristics that would allow the cover piece to be carried in a substantially planar configuration by grasping the cover piece between two opposing edge portions.

IV. Pressure Sensitive Adhesive

Referring initially to the term "pressure sensitive adhesive" used in claims 1, 11, 17, and 18, these claims now specify that the cover piece is manually attached to the lid of the container. In particular, as shown in FIG. 6, a light pressure is applied to the cover piece to detachably attach the cover piece over the opening in the lid of a beverage container. The claimed structure may thus be manually applied by a server in a retail environment in which hot beverages are made and served on the spot in disposable containers.

In particular, as generally described in column 4, lines 43-62 of the Reynolds patent, the Reynolds device employs a "heat sealable peelable" adhesive. Unlike the pressure sensitive adhesive as recited in the claimed invention, Reynolds requires a heat sealable adhesive to withstand the pressures of the pressurized beverage within the container under all anticipated conditions. The use of heat to form the bond between the peel tab and the can effectively precludes use of the Reynolds peel tab in a busy retail environment.

The Applicant thus respectfully submits that one of ordinary skill in the art would thus not read the Reynolds patent as disclosing a cover piece having a pressure sensitive adhesive that would allow the cover piece to be detachably attached to the lid by hand.

V. Orientation of Tab Portion

Claim 17 has been amended to recite a container assembly comprising a drinking container, a lid, and a cover piece. The cover piece recited in claims 1, 11, 17, and 18 is configured such that, when the cover piece is attached to the lid, the tab portion extends radially outwardly from the lid for easy grasping. The cover piece recited in the claims may thus be easily removed by a person drinking the beverage within the container. In certain situations, the cover piece may be even be removed by one hand because the tab extends radially outwardly from the lid. The structure recited in claim 17 is thus clearly distinguishable from the Reynolds device.

The Applicant thus respectfully submits that one of ordinary skill in the art would thus not read the Reynolds patent as disclosing a cover piece having a tab portion that extends radially outwardly from the lid of a container.

VI. Conclusion

Attached hereto as Exhibit A is a document entitled "Listing of the Claims and Amendments" containing a listing of the claims as currently presented. Exhibit A attached herewith contains the text of each pending claim, along with any amendments made hereby (illustrated using strikethrough and underlining) and the status of each pending claim.

Given the foregoing, the Applicant respectfully submits that claims 1-20 are in condition for allowance, and such allowance is respectfully requested. If there is any matter which could be expedited by consultation with the Applicants' attorney, such would be welcome. The Applicants' attorney can be reached at the telephone number below.

Signed at Bellingham, County of Whatcom, State of Washington this 14th day of July, 2004.

Respectfully submitted,

PAUL AKERS

By Michael R Schacht
Michael R. Schacht, Reg. No. 33,550
Schacht Law Office, Inc.
2801 Meridian Street, Suite 202
Bellingham, WA 98225-2400
Tel: (360) 647-0400
Fax: (360) 647-0412

CERTIFICATE OF MAILING
37 C.F.R. §1.8

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Signature: ROBIN FREY

Print Name: ROBIN FREY

Date: July 14, 2004